

ENTERED

January 09, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF TEXAS HOUSTON DIVISION**

TIMOTHY WRIGHT,
Plaintiff,

v.

CITY OF HOUSTON, ET AL.,
Defendants.

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CIVIL ACTION NO. 4:22-CV-2225

MEMORANDUM AND RECOMMENDATION

This civil rights case in which Plaintiff is proceeding pro se is before the Court on Defendant Justin Shadden's Motion for Summary Judgment (ECF 14) and Motion to File Amended Answer (ECF 24).¹ Because the Court recommends that the Motion to Dismiss be GRANTED, the Motion to Amend will be terminated as moot if this Memorandum and Recommendation is adopted by the District Judge.

Plaintiff alleges that "[o]n April 24, 2021 [he] was violently attacked by City of Houston Officers J. Shadden, Spinks and bystanders."² ECF 1-1 at 2. The record establishes and Plaintiff concedes that the events in issue actually took place on April 23, 2020. ECF 5-2; ECF 21 at 2. Plaintiff named J. Shadden as a Defendant in this action and although there is no return of service on file Justin Shadden represents that he was served with process. ECF 14 at 2. Justin Shadden has presented undisputed evidence that he has been employed as a City of Lubbock, Texas police officer since September 30, 2019 and was not in Houston, Texas in April 2020 (or April 2021).³

¹ The District Judge referred the case the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 9.

² Plaintiff initiated this case in state court and Officer Spinks, the only defendant served at the time, removed it to this federal court. ECF 1.

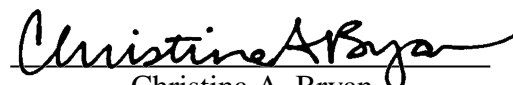
³ Plaintiff has presented evidence in his Response that indicates the Officer involved in the events of April 23, 2020 was named Jeremy Shaddin. ECF 21 at 6.

ECF 14 at 5-12. Plaintiff's Response to Shadden's Motion for Summary Judgment is not entirely clear but, while he continues to assert that "J. Shadden" violated his rights, he appears to acknowledge that Justin Shadden was served in error and he has "no knowledge as to why defendant was served as apart [sic] of this action." ECF 21 at 3.

For these reasons, the Court RECOMMENDS that Defendant Justin Shadden's Motion for Summary Judgment (ECF 14) be GRANTED and Plaintiff's claims against Justin Shadden be DISMISSED WITH PREJUDICE.

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(c). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds.

Signed on January 09, 2023, at Houston, Texas.


Christina A. Bryan
United States Magistrate Judge